TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1926

No. [redacted] 274

UTTERBACK-GLEASON COMPANY, APPELLANT,

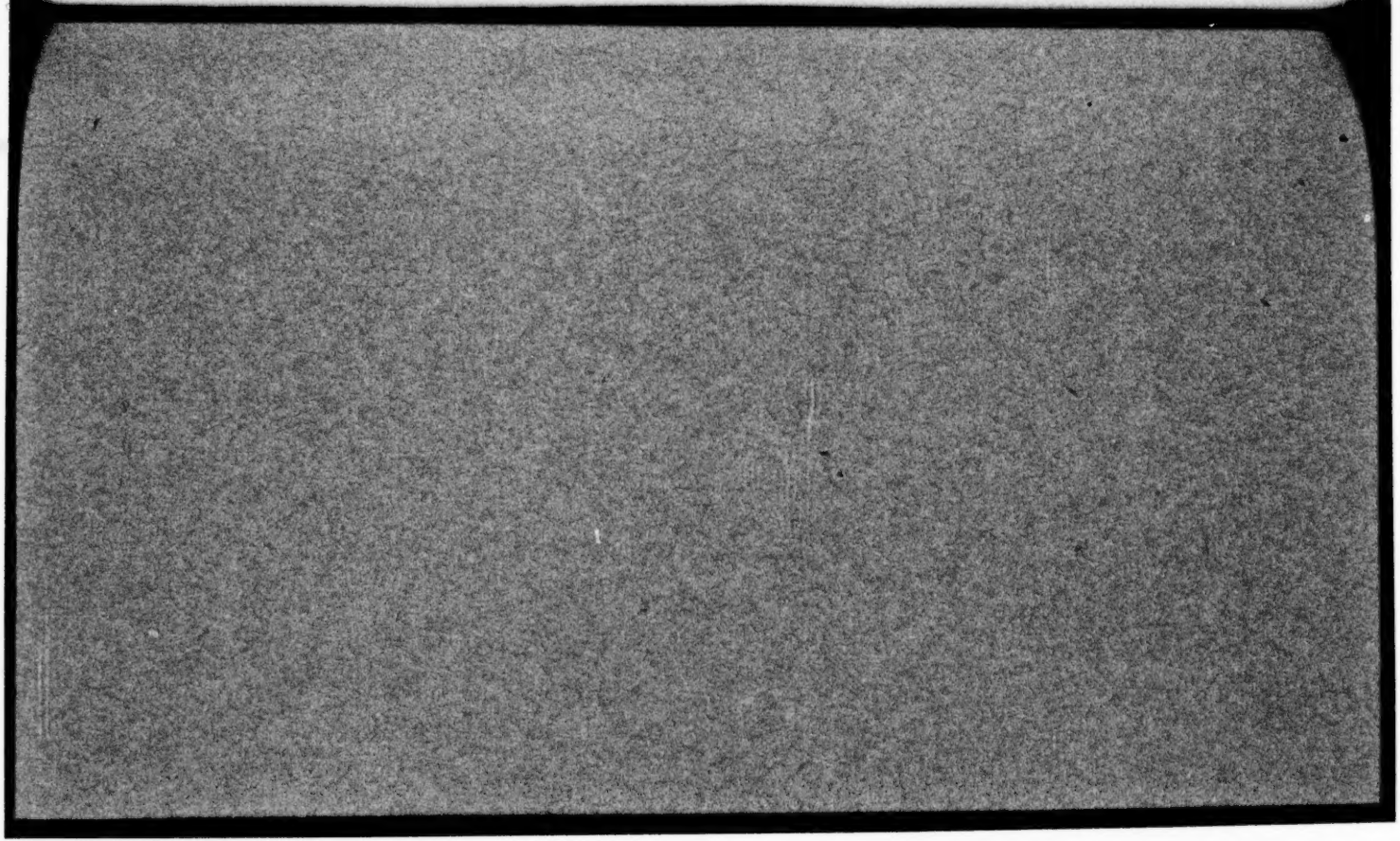
vs.

WILBUR D. SPENCER, INSURANCE COMMISSIONER OF THE STATE OF MAINE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE

FILED JANUARY 24, 1927

(31,027)



(31,627)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 904

UTTERBACK-GLEASON COMPANY, APPELLANT,

vs.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 5, 1926

[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MAINE, SOUTHERN DIVISION

UTTERBACK-GLEASON COMPANY, a Maine Corporation, Plaintiff,

vs.

WILBUR D. SPENCER, Insurance Commissioner of the State of Maine, Defendant

BILL OF COMPLAINT—Filed September 3, 1925

To the Honorable the Judge of the District Court for the District of Maine:

The plaintiff above named for its bill of complaint herein respectfully shows to this Honorable Court:

(1) Plaintiff, Utterback-Gleason Company, is a corporation duly organized and existing under and by virtue of the laws of the state of Maine, and its principal office and place of business is located in the City of Bangor, County of Penobscot, and State of Maine; and said corporation is a citizen of said state of Maine.

(2) Defendant, Wilbur D. Spencer is the duly appointed, qualified and acting Insurance Commissioner of the State of Maine, and is a citizen and resident of the State of Maine, and of the District of Maine, Southern Division.

(3) The ground upon which the jurisdiction of this Court depends is that this action arises under the constitution and laws of the United States.

(4) The matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars ($3,000).

[fol. 3] (5) Plaintiff is engaged in the business of buying from the Chrysler Sales Corporation, a corporation duly organized and existing under and by virtue of the laws of

[fol. 1] [Caption omitted]

[fol. 2]

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the State of Michigan, Chrysler cars and parts for same and selling the same at wholesale to dealers in Bangor and surrounding territory in Maine, and also at retail to buyers of automobiles in said territory. Said Chrysler Sales Corporation has its principal place of business in Detroit, Michigan and buys the entire output of Chrysler cars from the Chrysler Corporation and resells same to distributors such as plaintiff in this action, said distributors being very numerous and located and doing business in all parts of the United States. All automobiles sold by said Chrysler Sales Corporation to distributors and dealers in the United States, except automobiles sold to distributors having their place of business in Michigan, are sold in interstate commerce, and are shipped in interstate commerce from Detroit, Michigan, to distributors and dealers in states other than Michigan, including plaintiff and other distributors and dealers in the State of Maine. Plaintiff and other distributors in the State of Maine buy said automobiles in interstate commerce. When plaintiff and other distributors in Maine resell said automobiles purchased from said Chrysler Sales Corporation to dealers or retail purchasers in Maine as hereinafter set out, plaintiff and such other distributors sell an original article of interstate commerce. The automobiles manufactured by said Chrysler Corporation and so sold by plaintiff are known as Chrysler cars, enjoy a favorable reputation with the Maine public and have been and are being purchased by said public in rapidly increasing numbers. Plaintiff buying direct from the Chrysler Sales Corporation is known as a distributor and dealers who buy from plaintiff and sell only at retail [fol. 4] are known as dealers. Such dealers who buy from plaintiff are not employed by plaintiff or the Chrysler Sales Corporation but are customers of plaintiff. Said dealers who buy from plaintiff are numerous and the retention of their business is of great value to plaintiff and its loss or impairment would cause great financial loss to plaintiff greatly exceeding $50,000. The extent of such loss could not be measured nor be compensated by damages. Plaintiff has expended large sums of money and much time and service in securing said dealers who buy Chrysler cars from plaintiff and sell to the public in said territory. Plaintiff has acquired and built up a valuable business with said

dealers which is a very valuable property right and is dependent on the retention of said dealers as customers and on the retention of the good will of said dealers and on giving satisfaction to the buying public.

(6) A very large percentage of automobiles of all makes sold to the American public are and for a considerable period of time have been sold under plans whereby the purchasers at retail only pay part of the purchase price at the time of taking delivery of the car and are given credit for the balance which is usually made payable in installments. Ordinarily distributors and dealers have not sufficient capital to enable them to hold themselves the evidences of the unpaid balances due upon the automobiles thus sold on credit. It is the common practice for the distributors and dealers before selling cars on time to assure themselves of the services of a bank or finance company which agrees to purchase from them or to discount for them the notes, or other evidences of the balances due. The banks or finance companies rendering such services are obliged to maintain organizations to collect the payments when they are due and to watch that the cars are not improperly disposed of before [fol. 5] they are paid for. They always require that insurance against the perils of fire and theft be effected in respect to the cars which they finance. In order to cover the expenses of collecting the instalments and of guarding against the making away with cars before full payment of the instalments the finance companies have made substantial charges. These charges together with the cost of insurance and the interest on the unpaid balance of the purchase price, have always been paid by the retail purchasers of automobiles on time payment plan. The charges of finance companies have not been uniform and have been generally high. The placing of insurance has been largely controlled by finance companies and the insurance business has been rapidly getting away from local insurance agents. In many instances local dealers have become connected with finance companies sharing in profits made by such companies. Frequently purchasers of cars of many makes have paid excessive finance charges. This has increased the ultimate price paid by the consumer. For a long time it has been apparent to plaintiff and others engaged in the automobile business that a great service would be per-

formed to buyers of cars if a uniform insurance protection and the benefit of a moderate and uniform financing charge applicable to all retail time purchasers could be obtained. The Chrysler Sales Corporation was the first automobile company to work out and announce arrangements for securing this result.

(7) On or about the 16th day of June, 1925, said Chrysler Sales Corporation and the Palmetto Fire Insurance Company, an insurance corporation duly organized and existing under and by virtue of the laws of the State of South Carolina, with its princial office in Sumter, in said state, and duly authorized and licensed to conduct and transact business of writing direct fire and theft insurance in the state of Michigan, but not licensed to do business in the State of [fol. 6] Maine, and not doing any business or maintaining any agency therein, duly executed in the State of Michigan a contract or policy of insurance made and to be performed in the State of Michigan, wherein and whereby said Palmetto Fire Insurance Company undertook to insure all Chrysler automobiles sold in the United States at retail during the term of the policy against fire and theft for one year from the date of such sale, said insurance being granted under and pursuant to the terms and conditions of said contract or policy of insurance. On or about the 4th day of August, 1925, said contract or policy was superseded and modified, and the superseding and modifying contract or policy was by agreement between said Chrysler Sales Corporation and said Palmetto Fire Insurance Company made retroactive to the effective date of the original contract or policy of June 16, 1925, and said superseding and modifying contract or policy of insurance dated August 4, 1925, has at all times since August 4, 1925, been in force and effect and is now in force and effect. A copy of said policy is attached hereto, marked Exhibit "A" and made a part of this bill.

(8) Said contract or policy is what is known as an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year for the full factory list price f. o. b. Detroit, for a term of one year from the date of sale to the retail purchaser. Under the terms of said contract or policy insurer is to issue a certificate in the

name of Chrysler Sales Corporation for the account of whom it may concern whenever a car is reported sold at retail. Said policy expressly provides, however, that omission to report the sale of a car or to issue a certificate in respect thereof shall not prevent the retail buyer of the car and others interested from being protected under said [fol. 7] policy. Only said Chrysler Sales Corporation pays, or is liable to pay to said Palmetto Fire Insurance Company the agreed premium on said policy, and said premium is paid in the State of Michigan. Certificates are mailed by the Insurance Company from Michigan to the retail purchasers of said cars as a memorandum of the coverage afforded by said open policy, with counterparts to others known to have an interest in the respective cars.

(9) Said Chrysler Sales Corporation having entered into said contract or policy thereupon obtained and made available to retail purchasers of Chrysler cars a reduced uniform finance rate for time purchases, to-wit, eight per cent of the unpaid balance and announced the same to the public. When retail sale of a Chrysler car is made, whether for cash or on time, the purchaser and other parties interested are protected by the said Michigan contract made between plaintiff and said Palmetto Fire Insurance Company. Whether said car is sold for cash or on time, the price is the same, except for said finance charge of eight per cent on unpaid balance if the car is sold on time. No purchaser may obtain his car at a less price whether or not he desires the protection of such insurance. The insurance comes into effect under the Michigan contract made by said Chrysler Sales Corporation with said Palmetto Fire Insurance Company, and neither the plaintiff herein nor any other distributor or dealer can do anything to prevent this insurance coming into effect. For the protection of purchasers who may desire to themselves take out insurance giving them protection other than that provided by said contract or policy, said policy provides that if such purchaser takes other insurance, the insurance under said policy shall be merely excess insurance.

(10) Plaintiff is not an agent of the Chrysler Sales Corporation. Plaintiff is conducting its own business. The [fol. 8] course of the business is as follows: Plaintiff buys

Chrysler cars from said Chrysler Sales Corporation for a cash price computed as follows: List price less a given discount, plus war tax and certain delivery charges. From time to time as occasion may have required changes have been made in amount of list price, discount, or delivery charges which have also been known as handling charges or unloading charges. In computing the discount there is not included either the war tax, freight or the delivery charge. Plaintiff pays the freight and charges an increased price to dealers because of having paid said freight or otherwise taken care of transportation of cars to territory in which plaintiff sells cars as above stated. Plaintiff sells to dealers in said territory for cash at a price arrived at by deducting a certain discount from the list price and adding freight or transportation charge, war tax and delivery charges. The dealer in turn sells to the retail purchaser at a price equal to the list price plus freight or transportation charges, war tax, and delivery charge. The retail dealer reports to Chrysler Sales Corporation the name of the purchaser, date of sale, motor number, style, etc., on retail sales made. Thereafter said retail purchaser and other parties having an interest in the car receive by mail from said insurance company from its office in Detroit certificates which state the coverage afforded by said Michigan insurance contract. On July 1, 1925, the delivery charge on all models of Chrysler cars was increased and fixed at a certain amount for each type of Chrysler car.

(11) Neither plaintiff nor any of the dealers selling Chrysler cars in plaintiff's territory above referred to takes any part in the writing or placing of said insurance under said Michigan contract. Neither plaintiff nor any such dealer solicits or receives or transmits any applica-[fol. 9] tion for insurance. No arrangement that plaintiff or any dealer should make with any purchaser can change the protection afforded by the policy or prevent it from taking effect. Neither does plaintiff or any such dealer solicit, demand, receive or transmit any premium. Plaintiff and every such dealer must pay for each car on receipt of same the full price as above set out and cannot get back any part of said purchase price paid for the car. What plaintiff and each such dealer receives from any purchaser upon the sale of a car is the absolute property of plaintiff

or such dealer. It is the proceeds of the sale of its or his own property which has already been paid for. Neither plaintiff nor any such dealer is bound to or does transmit to anybody as a premium for insurance or in any other guise any part of such purchase price. Neither plaintiff nor any such dealer acts in any manner in behalf of or as an agent or employe of said Palmetto Fire Insurance Company. Neither the plaintiff nor any such dealer receives any commission or other compensation in any form on or by virtue of the insurance protection afforded to the retail purchaser by said Michigan contract.

(12) Chrysler cars are now being sold in Maine in large numbers by plaintiff and dealers who buy from plaintiff and others. The retail purchaser thereof and other parties interested in said cars wherever said purchasers or parties may reside are protected by said insurance policy. Defendant claiming to act as Insurance Commissioner of the State of Maine has ruled and announced to the plaintiff and to said Chrysler Sales Corporation, and to the public that the sale of Chrysler cars, pursuant to the plan hereinbefore described, wherein and whereby the purchasers become protected by the Michigan insurance contract as above stated is contrary to the laws of the State of Maine, and that plaintiff and every Chrysler distributor or dealer [fol. 10] selling Chrysler cars in Maine is violating the criminal and civil laws of said state, including among others the following Statutes: Sections 121 and 122 of Chapter 53 of the Revised Statutes of Maine as amended by Chapter 25 of the Public Laws of 1917 and Section 129 of Chapter 53 of the Revised Statutes of Maine; and other statutes not specified by defendant. Defendant has threatened and is now threatening to procure the arrest and conviction of every Chrysler distributor or dealer selling in Maine any Chrysler car the purchaser of which is or may be protected under said insurance contract made between Chrysler Sales Corporation and Palmetto Fire Insurance Company. Plaintiff and a number of dealers buying Chrysler cars from plaintiff as hereinbefore stated have sold a considerable number of Chrysler cars pursuant to the course of business hereinbefore described since July 1, 1925, the retail purchasers being protected by said Michigan contract of insurance as hereinbefore alleged and defendant threat-

ens to immediately institute both criminal and civil proceedings against plaintiff and said dealers on account thereof and on account of any future sales so made. It is not possible for plaintiff or any such dealers to sell Chrysler cars at all without the retail purchaser and other parties interested receiving such insurance protection. Plaintiff and said dealers are now in a position where they must either abandon the sale of Chrysler cars, thereby sustaining large and irreparable loss of business and good will, and their investment in advertising and in developing a market for Chrysler cars, or continue to sell as hereinbefore described. Defendant has sent out and is giving out and publishing letters and communications stating that said Chrysler Sales Corporation and its distributors and dealers in Maine, including the plaintiff and said Palmetto Fire Insurance Company, are violating the law of Maine by virtue of sales of cars as hereinbefore alleged. By and as the [fol. 11] result of said threats and communications published by defendant, dealers and prospective retail buyers of Chrysler cars in plaintiff's said territory in Maine are being harassed and intimidated and brought into a state of uncertainty seriously and irreparably injurious to plaintiff's business. Unless relief by temporary restraining order is immediately granted to plaintiff against said threats and said threatened acts of defendant plaintiff's business will be destroyed or irreparably damaged and plaintiff will suffer immediate and irreparable loss and damage before the matter can be heard on notice. Unless said restraining order is followed by temporary injunction against said acts and threatened acts pending this action and until final decree irreparable loss and damage will result to plaintiff before the merits of this action can be finally determined. Plaintiff has no adequate remedy at law. The injuries done by said acts and threats of defendant are not and will not be compensable by damages. The actions threatened by defendant would result in multiplicity of prosecutions which would irreparably damage and injure the sale of Chrysler cars in plaintiff's said territory and irreparably injure the good will of plaintiff and the value of plaintiff's business. Unless immediately restrained defendant will cause the arrest and prosecution of plaintiff and said dealers and of others under the statutes

hereinbefore mentioned which impose extremely severe penalties and forfeitures. The result of said arrests and prosecutions would be to practically destroy plaintiff's business in Chrysler cars and plaintiff's property and good will hereinbefore referred to, irrespective of the final outcome of said arrests and prosecutions and irrespective of the final outcome of this action. The penalties and forfeitures under said statutes, if said statutes can and do prohibit the acts of plaintiff and said dealers hereinbefore mentioned, apply to each sale made by plaintiff and each such dealer as a separate offense and in the aggregate would reach such a large sum as to preclude a test of the [fol. 12] validity of said statutes by awaiting the threatened arrests and actions.

(13) If and to the extent that the laws of the State of Maine purport or may be construed to prohibit plaintiff and other distributors and dealers in Chrysler cars in Maine from making sales in the manner hereinbefore set forth of any automobiles the retail purchasers of which shall be protected by said contract in Michigan, or to subject plaintiff and said dealers and distributors to criminal prosecution and punishment or to forfeiture by reason of sales so made by them, or purport or may be construed to invalidate or otherwise apply to said insurance contract made by Chrysler Sales Corporation in Michigan with Palmetto Fire Insurance Company, and the protection afforded by same to purchasers of Chrysler cars in Maine and others interested in said cars, then to that extent said state statutes are void as violating and as contrary to the constitution of the United States and amendments thereto and particularly the Fourteenth Amendment thereof by reason of attempting unlawfully to regulate and burden interstate commerce, depriving the plaintiff and said customers of plaintiff of property without due process of law, impairing the freedom of contract guaranteed by the Federal Constitution and denying to the plaintiff and said dealers the equal protection of the law, and as attempting to regulate, prohibit and burden the making and performance of a contract lawfully made and to be performed outside the limits of the State of Maine, and thereby denying full faith and credit to the laws of Michigan governing said contract or

policy and under which the same is valid. For the same reason, the said acts and communications, rulings and threats of defendant as Insurance Commissioner of the state of Maine as hereinbefore alleged are likewise a violation of the Constitution of the United States.

(14) There are many persons in Maine who have sold [fol. 13] and are selling Chrysler cars in the same manner as plaintiff and dealers of plaintiff as hereinbefore described and who are affected and will be affected by the acts and threatened acts of defendant hereinbefore referred to in the same manner as plaintiff and whose situation as to the subject matter of this action is substantially the same as plaintiff's. Said parties are so numerous that filing a separate bill for each or joining them in a bill, or bringing them all before the court, is impracticable. This action is brought for the benefit of plaintiff and all such parties so similarly situated.

(15) For as much therefore as plaintiff is without remedy in the premises except in a court of equity and to the end that plaintiff may obtain from this Honorable Court that relief to which plaintiff is by right and equity entitled, plaintiff respectfully prays that the above named defendant be directed to full true and perfect answer make to this bill of complaint, but not under oath, answer under oath being hereby expressly waived, and that defendant, and his successors in office, and his deputies, agents and employes and all persons acting for him be permanently restrained and enjoined from bringing or causing to be brought or threatening to bring or to cause to be brought any prosecutions or any actions or proceedings for the recovery of penalties or forfeitures or any civil actions or proceedings against the plaintiff or against any distributors of or dealers in Chrysler cars in Maine based on or purporting to be based on or by reason of said contract of insurance between said Chrysler Sales Corporation and Palmetto Fire Insurance Company or based on or purporting to be based on or by reason of any rights existing or arising in favor of residents of Maine or in respect to property situated in Maine by reason of the existence of said contract of insurance or the performance thereof or the sale of Chrysler cars in [fol. 14] Maine, or based on or purporting to be based on

or by reason of any of the acts done or to be done or business transacted or to be transacted by plaintiff or by any distributor of or dealer in Chrysler cars in Maine as described in detail in said bill of complaint and from interfering in any other manner with it or their said business as aforesaid and from issuing, declaring or publishing any statement official or otherwise that plaintiff or any of said distributors or dealers is violating any law of the State of Maine by virtue of any of the acts or transactions set forth in this bill of complaint. Plaintiff further prays that pending the final hearing and determination of this action a temporary injunction be granted restraining defendant and his successors, in office, his deputies, employes and all persons acting under him as hereinbefore prayed and that on final hearing said injunction be made perpetual. Plaintiff further prays for such other and further relief as may be equitable and proper in the premises.

Wherefore plaintiff prays that a writ of subpœna issue herein, directed to the above named defendant, Wilbur D. Spencer, Insurance Commissioner of the State of Maine, commanding him on a day certain to appear and answer to this bill of complaint.

Utterback-Gleason Company. Andrews, Nelson & Gardiner, Solicitors for Plaintiff. Larkin, Rathbone & Perry, of Counsel.

[fol. 15] *Duly sworn to by James Irving Gleason. Jurat omitted in printing.*

[fol. 16] EXHIBIT "A" TO BILL OF COMPLAINT

Non-valued Fire, Theft, & Transportation Form

No. A-9657. Automobile Policy

Palmetto Fire Insurance Company, Sumter, South Carolina,

In consideration of the warranties and the premium hereinafter mentioned, does issue the assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein

specified, against direct loss or damage, from the perils insured against, to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: $ As specified. Premium: As agreed.
Name and address of assured: Chrysler Sales Corporation, Detroit, Michigan.

and/or for account of whom it may concern as hereinafter specified. The term of this policy begins at noon on the 1st day of July, 1925, and ends at noon on the 1st day of July, 1926, standard time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates.)

Amount of Insurance: As specified. — dollars ($—).

Warranties

The following are statements of facts known to and warranted by the Assured to be true, and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.

2. The following is the description of the automobiles: Information not required except as hereinafter specified.

3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.

4. The uses to which the automobile described are and will be put, are: This information not required by insurer.

5. The automobile described is usually kept in garage, located: This information not required by insurer.

Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

[fol. 17] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured'- service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

War, Riot, etc.:

(b) Loss or damage caused directly or indirectly by invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

Title and Ownership

(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder—

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 18] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Com-

pany, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if appraisal is de-

[fol. 19] manded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commenced within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions, and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

In witness whereof this Company has executed and attested these presents but this policy shall not be valid unless countersigned by a duly authorized agent of the Company.

P. Moses, President. Davis D. Moise, Vice-President.

Countersigned at Detroit, Michigan, this 4th day of August 1925.

Edwin J. Carter, Agent.

[fol. 20] EXHIBIT "A"

Rider Attached to and Forming Part of Policy No. A-9657 of the Palmetto Fire Insurance Company, Herein Called "Insurer"

This rider shall supersede and take the place of anything to the contrary in the conditions and provisions of the policy to which it is attached.

I

Definitions

The following words whether singular or plural, unless the context otherwise requires, shall be given the following meanings:

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation of Highland Park, Michigan, its successors and assigns.

Finance companies shall mean banks, trust companies, finance or credit companies, corporations, partnerships, trusts, dealers, individuals and other organizations who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial passenger automobiles sold or distributed by Chrysler and which have been or may hereafter be manufactured by Chrysler Motor Corporation, a Delaware corporation, of Detroit, Michigan, its successors or assigns.

To fianance shall mean to purchase or loan upon, or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

[fol. 21] Dealer shall mean persons, firms or corporations selling or leasing, or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail or cash or on deferred payments, or to lease Chrysler cars at retail on the deferred payment plan.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the

deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: from July 1st, 1925, to June 30th, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailments, contracts, and/or other instruments reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the perils insured against in the policy and/or certificate.

II

Assured and Coverage

The Insurer does hereby i[illegible] Chrysler finance companies, dealers and purchasers [illegible]s their interests may ap- [fol. 22] pear against loss or damage caused by or arising out of any of the hazards mentioned in the printed part of this policy, to Chrysler cars, provided, however, that the lawful seizure and/or confiscation of any Chrysler car for violation of any liquor or prohibition statute by or with the knowledge or consent of the purchaser, shall terminate the liability thereunder of Insurer as to the purchase or leases of such car, but shall not affect the liability hereunder of Insurer as to other parties.

All banks, trust companies, persons, firms or corporations with or to whom finance companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments shall be protected by this insurance.

Coverage hereunder and under certificates issued hereunder shall be for one hundred per cent (100%) of the list price, F. O. B. Detroit, of each Chrysler car insured hereunder, on the date of purchase or lease of said — by the purchaser, including standard equipment, and any extra equipment and accessories costing in the aggregate not to exceed One hundred dollars ($100). The limit of liability of

the Insurer for loss or damage to a Chrysler car with standard equipmnt insured hereunder, shall be the total cash value of such car and standard equipment at the time of such loss or damage. The limit of liability of Insurer for loss or damage to extra equipment and accessories insured hereunder, shall be seventy-five per cent (75%) of the actual cash value of such extra equipment and accessories at the time of such loss or damage, in no event to exceed the sum of seventy-five dollars ($75.00).

Coverage hereunder and under certificates is automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall extend in respect to such Chrysler [fol. 23] car for a period of twelve (12) months; provided, that in every case where notes and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such notes and/or security instruments.

It is specifically agreed that every Chrysler car sold at retail during the term of this policy, shall be automatically covered hereunder, notwithstanding any failure or omission to issue a certificate or any failure or omission to report the sale of such car as required herein. No act or omission of any beneficiary hereunder shall vitiate or affect the indemnity or coverage of any other party insured hereunder, who is not responsible for such act or omission to act, it being the intent of this policy that only parties responsible for acts or omissions to act shall suffer thereby.

Anything to the contrary herein notwithstanding, it is expressly agreed that no Chrysler car shall be covered hereby which does not, when the purchaser takes delivery of the same or receives a bill of sale thereof, carry a Class A rating for fire insurance by the National Board of Fire Underwriters or which is not continuously equipped with a locking device approved by the Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage hereunder on any Chrysler car shall not be vitiated or affected because such Chrysler car is operated across the border of the United States and into the territory of the Government of Mexico.

III

Certificates

Insurer shall issue certificates to purchasers in the form attached hereto, which certificates and insurance evidenced [fol. 24] thereby, shall not be subject to cancellation by either party. If sales of Chrysler cars are financed there shall be issued at the request of finance companies financing same, duplicates of certificates.

IV

Transfers

If any original purchaser shall transfer his interest in a Chrysler car, insured hereunder, and shall mail a notice of such transfer together with his certificate, and $1.50 to the Insurer at its office No. —, Detroit, Michigan, (said charge being to defray the cost of issuing a new certificate), insurance hereunder shall inure to the benefit of the transferee for the unexpired term originally insured, and Insurer will issue a new certificate for such unexpired term of such transferee; provided, however, that if the sale of the car so transferred has been financed, the consent in writing of any finance company financing the same shall first be obtained to such transfer.

V

Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance, and shall not apply to any loss or damage until amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made within 90 days of a claim for loss from such other insurance of all amounts owing on any note for a Chrysler car, insurer shall advance the amount of its liability hereunder to the insured authorized to receive pay- [fol. 25] ment of the loss or damage as a loan without interest, the repayment of which shall be conditioned upon and

be required to be made only to the extent of any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest, instead of as payment of a loss, the repayment of which loan to the Insurer shall be conditioned upon and be required to be made only to the extent of any recovery from the purchaser by the party to whom such loan has been made by the Insurer. If any action is brought against purchaser at the request of Insurer, Insurer shall pay all attorney fees, expenses and costs in such action.

VI

Disclaimer of Liability by Insurer

If any claim or legal action be made or commenced against Chrysler, or any finance company, by purchaser, arising out of the refusal of insurer to pay any loss under this policy, or a certificate issued hereunder, Insurer shall defend against such claim or action and pay all attorney fees, costs and expenses incurred and/or judgments recovered in any such claim or action.

VII

Reports

Commencing with the 15th day of August, 1925, and on the 15th day of each calendar month thereafter until and including July, 1926, Chrysler shall send a monthly report to the Insurer at Detroit, Michigan, of all cars insurance with respect to which is hereunder contemplated and pro- [fol. 26] vided for. Such reports shall show separately the number of all Chrysler four-cylinder cars open and closed, Chrysler six-cylinder cars open and closed, commercial chassis and commercial cars with bodies with serial and motor numbers respectively thereof. The report of August 15, 1925, shall show the cars in possession of or in transit to distributors and/or dealers in the United States on July 1, 1925, and cars thereafter shipped during the month ending July 31, 1925. Subsequent reports shall show ship-

ments to distributors and/or dealers in the United States during the calendar month preceding the month in which the report is sent.

Chrysler further agrees to submit such other information as Insurer may from time to time reasonably require regarding Chrysler cars that are or may be covered by insurance hereunder and to permit Insurer from time to time to check its records against Chrysler records in regard to such Chrysler cars.

VIII

Premiums

Agreed premiums are to be paid by Chrysler to Insurer through Alexander & Alexander, Inc., General Agents, at ——, Detroit, Michigan, for insurance hereunder on or before the 15th day of each month beginning August 15, 1925, and ending July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding calendar month and insured hereunder.

Such reports shall be accompanied by an itemized statement.

IX

Payment of Losses

Payment of all losses claimed hereunder shall be made to purchaser unless the purchase of a car with respect to which claim is made, has been financed in which case payment of the loss shall be made to any finance company, dis- [fol. 27] tributor or dealer financing the same, for account of all parties as their respective interest may appear.

X

Examination

All parties insured hereunder shall submit to examination under oath by any person named by Insurer as often as shall be required and shall subscribe to same and shall produce for examination all books of account, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage of any Chrysler car hereunder at such reasonable

place as may be designated by Insurer or its representatives and to permit extracts and copies thereof to be made.

XI

Replacements

If Insurer should so elect Chrysler will sell to Insurer new Chrysler cars at the wholesale list price F. O. B. Detroit on date of loss to replace any similar Chrysler car as to which there has been filed with the Insurer a claim for total loss under this policy and/or certificate issued hereunder.

XII

Recording

The recording or filing of security instruments shall not be required by Insurer but shall be optional with the finance company interested and/or holders, and/or owners of such security instruments.

XIII

Cancellation

This policy and certificates are not subject to cancella- [fol. 28] tions by Insurer or by any of the insured; this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that coverage under certificates issued hereunder at any time during the term of this policy shall be and remain in full force as to all parties concerned until the expiration dates named in such certificates.

XIV

Qualified Company

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy is so executed and all certificates thereunder shall be so issued as to comply with and conform to all laws State or Federal at any time applicable, and agrees to do all things which may be necessary to do, in order to comply with said laws and to carry

out the terms, provisions and purposes of this policy and of certificates issued hereunder, it being expressly understood that it is one of the purposes of this policy that Insurer shall issue certificates of insurance hereunder with respect to every Chrysler car sold at retail throughout the United States during the term of this policy.

XV

Michigan Law and Acceptance

This policy and the certificates issued hereunder are to be construed in accordance with and governed by the laws of the state of Michigan, and acceptance of this policy by Chrysler at Detroit, Michigan, shall put the same in full force and effect with respect to all parties covered hereunder or under any certificate issued hereunder.

Palmetto Fire Insurance Co., by Edwin J. Carter, Agent.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 29] It is understood and agreed that Policy No. A9657 executed the 4th day of August, 1925, by the Palmetto Insurance Company shall take the place of and be substituted for Policy No. A-9652, executed on or about the 16th day of June 1925, which is hereby abrogated.

Certificate issued under said Policy A-9652 shall be considered as issued under this policy and be governed by the terms hereof.

Executed at Detroit, Michigan, this 4th day of August, 1925.

Chrysler Sales Corporation, by (S.) H. A. Davies, Asst. Treas. Palmetto Fire Insurance Company, by (S.) Edwin J. Carter, Agent.

The above contract is consented to by us.

Commercial Credit Company, by A. E. Duncan.

[fol. 30] Form of Certificate

No. —

Purchaser's Original Copy

Non-valued Fire, Theft, & Transportation Automobile Form

This is to certify that under policy No. A 9657 of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to (Name of purchaser:) —— ——, (Address:) No. —, (Street:) ——, (City:) ——, (State:) ——, and described as follows: Year: ——; Model, ——; type of body (if truck, state tonnage): ——; factory or serial No. ——; motor No.: ——, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at noon —— and ending at noon ——, standard time, for a sum not exceeding —— dollars ($—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust companies, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificate only to

(Name:) —— ——, (Address:) ——, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business, nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and $1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detroit, Michigan.

Countersigned at Detroit, Mich., (Date:) —— —, —— by (Agent:) —— ——.

Provisions Required to be Stated by Law

[fol. 31] Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever, and lightning.

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

War, Riot, etc.:

(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto.

Title and Ownership

(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the As-

sured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered [fol. 32] hereunder, this Company will advance to the Assured by way of loan of money equivalent of such loss or

damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required,

shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss of damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required [fols. 33 & 33a] have been received by this Company, and if appraisal is demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commenced within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 34] Summons and marshal's return omitted in printing.

[fol. 35] In United States District Court

[Title omitted]

Application for Hearing and Motion for Temporary Restraining Order—Filed September 3, 1925

To the Honorable the Judge of the District Court for the District of Maine:

Now comes plaintiff above named and makes this, its application for a hearing in this cause for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States, as amended by the Act of Congress

approved March 14, 1913; and plaintiff further files this, its motion for the issue of a temporary restraining order to remain in force until the application for said interlocutory injunction can be heard and determined, for the reasons and on the grounds set forth in its Bill of Complaint, and to prevent irreparable loss and damage to plaintiff.

Andrews, Nelson & Gardner, Solicitors for Plaintiff.
Larkin, Rathbone & Perry, of Counsel.

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed September 8, 1925

Plaintiff having applied for a temporary injunction restraining defendant as prayed in the duly verified bill of complaint and it appearing that such injunction, if granted, may suspend or restrain the enforcement of a state law by restraining the action of a state officer, on the ground of the unconstitutionality of said statutes, if such statutes should be construed as claimed by defendant, and if said statutes prohibit the acts and practices of plaintiff and customers of plaintiff as set out in said complaint, and it appearing from specific facts alleged in said verified bill that immediate and irreparable loss and damage will result to applicant, the plaintiff herein, before the matter can be heard on notice, and it appearing from said complaint that plaintiff is prima facie entitled to interlocutory injunction as prayed, and it further appearing that the defendant is issuing declarations and statements to the effect that plaintiff and plaintiff's customers are violating the criminal and civil laws of Maine and are subjecting themselves to heavy fines, forfeitures and penalties; and that said defendant is threatening to immediately cause the arrest and prosecution of plaintiff and other distributors and dealers selling Chrysler cars in Maine and that said declarations, statements and threats have already had serious effect on, and are causing irreparable injury to plaintiff's property and business, and [fol. 37] that such arrests and prosecution would cause irreparable injury to plaintiff and plaintiff's property be-

fore any hearing on notice can be had in this matter by causing great loss of customers, dealers and good will and disruption of sales organization.

Now, therefore, on motion of plaintiff, it is ordered, that defendant appear on Sept. 15th, 1925, at 11 o'clock A. M., or as soon thereafter as counsel can be heard, or at such other times as may hereafter be duly set as the time for the hearing of said application, at the court room of the above named court, in Portland, Maine, and there show cause why the interlocutory injunction in said bill of complaint prayed for should not issue, and I hereby call to my assistance to hear and determine the application, two other judges, to-wit: Hon. Chas. F. Johnson, Circuit Judge, and Hon. Clarence Hale, District Judge.

Further ordered, that a copy of the Bill of Complaint be served on defendant at the time of the service of this order.

Further ordered, that at least five days' notice of said hearing on application for temporary injunction be given to the Governor and to the Attorney General of the State of Maine and to the defendant in this action.

John A. Peters, U. S. District Judge.

3 Sept. 1925.

[fol. 38] United States of America,
District of Maine,
Southern Division, ss:

Utterback-Gleason Company, Plaintiff,

vs.

Wilbur D. Spencer, Insurance Commissioner of the State of Maine, Defendant

September 4, 1925.

I have this day made service of the within Order of Court, upon Wilbur D. Spencer, Insurance Commissioner of the State of Maine, Defendant in the above entitled cause, by delivering to him in hand, at Augusta in said District, a true and attested copy hereof. And, at the same time, I delivered to him in hand a copy of the Bill of Complaint, as within directed.

And, on the same day, I made service of the within Order of Court upon Ralph O. Brewster, Governor of the State of

Maine, by delivering to him in hand, at Augusta in said District, a true and attested copy hereof.

And, on the same day, I made service upon Raymond Fellows, Attorney General of the State of Maine, by delivering in hand to Sanford L. Fogg, Deputy Attorney General of the State of Maine, at Augusta in said District, a true and attested copy hereof.

Burton Smith, Deputy U. S. Marshal, District of Maine.

Fees:

Services, 4	$8 00
Copies, 3 at 50¢	1 50
	$9 50

Sept. 4, 1925.

On behalf of the Attorney General of the State of Maine I hereby acknowledge receipt of an attested copy of an order of the U. S. District Court for the District of Maine, Southern Division, to appear for hearing Sept. 15, 1925, at Portland at 11 A. M. in the case of Utterback-Gleason Company vs. Wilbur D. Spencer, Insurance Commissioner of the State of Maine.

Sanford L. Fogg, Deputy Attorney General of the State of Maine.

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING APPLICATION FOR INTERLOCUTORY INJUNCTION—January 4, 1926

This day this cause came on to be heard before the Honorable Charles F. Johnson, Circuit Judge, the Honorable Clarence Hale, District Judge, and the Honorable John A. Peters, District Judge, sitting as a statutory court as required by the provisions of Section 266 of the Federal Judicial Code, on the application of the plaintiff for an interlocutory injunction and upon verified bill of complaint

and the arguments of counsel, and was submitted to the court.

And the court being fully advised in the premises, find that the complainant is not entitled to the interlocutory injunction prayed for in its bill of complaint.

It is, therefore, ordered and decreed that the application of the plaintiff for an interlocutory injunction herein be and the same is hereby refused and denied.

January 4, 1926.

Charles F. Johnson, U. S. Circuit Judge. John A. Peters, U. S. District Judge. Clarence Hale, U. S. District Judge.

[fol. 40] In United States District Court

[Title omitted]

Opinion—December 19th, 1925

Hale, J.:

In *Mo.* 881, the plaintiff, a Michigan corporation, engaged in the business of selling automobiles, known as Chrysler cars, at wholesale to dealers in Maine and in other States, seeks to enjoin the defendant from bringing any prosecutions or proceedings for the recovery of penalties, or any civil actions, against the plaintiff or any dealers in its cars,—such dealers acting under the terms of certain alleged contracts of insurance between plaintiff and Palmetto Fire Insurance Company,—and from interfering with plaintiff's business in Maine, and from declaring or publishing any statement that plaintiff, or any one of its dealers in Maine, is violating any law of the State of Maine, regulating insurance business in Maine.

[fol. 41] In No. 882, the Utterback-Gleason Company, a Maine corporation, a dealer in Chrysler cars, and representing all dealers in Chrysler cars similarly situated in Maine, prays for a similar injunction against the defendant.

The plaintiffs in both cases aver that the Maine Statutes relating to the regulation of insurance in Maine do not apply to the conditions set forth by the plaintiff; and, if

they do, they are unconstitutional under the due process clause of the Fourteenth Amendment to the Constitution of the United States, and as undertaking to regulate interstate commerce and as impairing freedom of contract. The case is heard by a Court constituted under Section 266 of the Judicial Code.

In No. 881 the bill in equity alleges that the Chrysler Sales Corporation is a Michigan corporation engaged in buying and selling the entire output of Chrysler cars, now manufactured by a certain company called The Chrysler Corporation, organized in Delaware and having its factories in Michigan; that it sells its automobiles to dealers in Maine and in other States, and in other countries; that such dealers resell the cars to purchasers in the several States and countries; and that thereby they are selling and causing to be shipped articles in interstate commerce; that the articles so sold by the plaintiff are known as Chrysler cars; that they enjoy a favorable reputation with the public and are sold in rapidly increasing numbers; that the plaintiff has met with large success and does a large business at great cost; that at present there are more than three thousand such dealers in the several States selling Chrysler cars, and more than twenty-six such dealers in Maine; and that the sales of such dealers in Maine during the first half of the year 1925 exceeded two hundred thousand dollars.

That more than eighty per cent of automobiles sold to the American public are sold under plans whereby the purchasers at retail pay only part of the purchase price when they take delivery of the cars, and are given credit for the balance, made payable in installments. That it is the practice of dealers, who are not generally persons of large means, to assure themselves before selling the cars on time, of the services of some banking or finance company, which [fol. 42] agrees to purchase from them or to discount notes for them. Such finance companies are obliged to maintain organization to collect the payments for the cars and to watch that such cars are not disposed of before they are paid for; such companies always require that insurance against the perils of fire and theft be required in respect to the cars which they finance; that the charges for such financing, together with the cost of insurance and the interest on the unpaid balance of the purchase price have always

been paid by the retail purchasers of cars sold on time payment plan; that such charges have not been uniform, and have generally been high, and that, by all such charges, the price paid by the ultimate purchaser of the cars has been increased.

That plaintiff is now seeking to make arrangements to secure a uniform and moderate financing charge on all Chrysler cars; and that, in order to accomplish this, it has found it necessary to provide for uniform insurance protection on all Chrysler cars; that, to effect this, plaintiff is seeking to secure such insurance at a moderate cost by an open contract or policy of insurance made and to be performed, as it alleges, in Michigan, covering every Chrysler car against fire and theft for one year after date of purchase at retail for an amount not to exceed the factory list price; that, by such policy, adequate protection for every retail buyer of a Chrysler car may be provided. That uniform insurance is thus arranged, and a moderate and uniform financing system is made available for all sales of Chrysler cars on the installment plan; and that thereby the value of the Chrysler product is increased and a substantial saving is made; that, by such insurance, automatic protection for every retail buyer of the Chrysler cars and for any other parties having an interest therein or lien thereon can be obtained; and, uniform insurance being thus arranged, a moderate and uniform financing charge may be made available for all sales of Chrysler cars on the installment plan; and thereby the value of the Chrysler car to the ultimate buyer may be increased, and a real and very large saving made.

[fol. 43] That, having these facts in view, on or about June 16th, 1925, plaintiff duly executed, in the State of Michigan, a contract, or policy, of insurance with the Palmetto Fire Insurance Company, a South Carolina corporation, licensed to conduct business in Michigan, and having a general agency there, but not licensed to do business in Maine and not maintaining any agency in Maine; that this contract made with the Palmetto was to be performed in the State of Michigan, and that the Palmetto undertook to insure all Chrysler automobiles sold in the United States at retail, during the term of the policy, against fire and theft for one year from the date of sale, the insurance

being granted pursuant to the terms of the contract of insurance; that the original contract has been amended, and a copy of the policy now in use is made a part of the bill. It is called an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year. Under its term the insurer is to issue a certificate in the name of the plaintiff for the account of whom it may concern whenever a car is reported sold at retail. The form of the certificate is made part of the bill. The policy is to provide that omission to report the sale of a car or to issue a certificate in respect thereto shall not prevent the retail buyer of the car from being protected under the policy.

The bill alleges that only the plaintiff pays, or is liable to pay, to the insurance company the premium of the policy; that the premium is paid in Michigan and that the policy is kept in Michigan; and certificates are mailed by the insurance company from Michigan to the retail purchaser, that, when the retail sale of a car is made, the purchaser is protected by the Michigan contract of insurance that, whether the car is sold for cash or on time, the price is the same, except for a charge of eight per cent on any unpaid balance, if the car is sold on time; that no purchaser can obtain his car at a less price, whether or not he desires the protection of such insurance; that if cash purchasers desire other insurance, such insurance shall be merely excess insurance. When a sale is made the retail dealer reports to the Sales Company the name of the purchaser, the date of the sale, motor number, style and all necessary details, and plaintiff [fol. 44] notifies the agent of the insurance company in Michigan who mails the certificate of insurance from his office in Detroit to the purchaser, and counterparts of it to others who to his knowledge may have an interest in the car.

Plaintiff says that it is now, as aforesaid, selling large numbers of its cars in Maine to retail purchasers, on the above general plan; and it complains that the defendant, acting as Insurance Commissioner of the State, has announced to the public that, so far as insurance in the name of purchasers is effected, such sales of Chrysler cars are contrary to the laws of the State of Maine; and that the Chrysler dealer, in so selling cars in Maine, is violating

certain statutes of Maine; and it complains further that defendant is threatening to procure the arrest of dealers in Chrysler cars who are selling cars in Maine under the arrangement by which insurance is effected on the same. The plaintiffs in both cases assert that the dealers are in no sense agents within the meaning of the Revised Statutes of Maine; that they take no part in placing the contract of insurance; that the dealer cannot separate the premium from the cost of the car; that if the Maine Statutes brought in question are properly construed, they have no application; and, if construed to apply, they are violating the Federal Constitution.

Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by Chapter 25 of the Public Laws of Maine for 1917, is as follows:

"Sec. 121. Penalty for Soliciting Applications Without License Increased.—The insurance commissioner may issue a license to any person to act as an agent of a domestic insurance company, upon his filing with the commissioner a certificate from the company or association, or its authorized agent, empowering him to so act; and to any resident of the state to act as an agent of any foreign insurance company, which has received a license to do business in the State as provided in section one hundred and five or section one hundred and fifty upon his filing such certificate. Such license shall continue until the first day of next July. If any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding sixty days, for each offense; but any policy issued on such application binds the company if otherwise valid. Agents of duly authorized insurance companies may place risks with agents of other duly authorized insurance companies when necessary for the adequate insurance of property, persons or interests. An insurance agent shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the state. Nothing herein contained [fol. 45] shall require a duly licensed insurance agent or

broker to obtain any license for an employee doing only clerical work in the office of said agent or broker."

Plaintiffs say that on one of the provisions and inhibitions of this statute applies to any of the acts of the Sales Corporation or its twenty-six dealers—or more—in Maine. It contends that its contract is a contract of insurance, made and completed in Michigan and requiring no act to be done in Maine to effect its completion; that it takes effect upon a sale of a car at retail; and that, when so sold, the insurance becomes automatically effected, by virtue of the contract. We cannot sustain this contention. The Michigan contract appears to us not to be a completed insurance contract, but an agreement for future insurance. By its terms, the insurance does not become effective until the car is purchased in Maine from the dealer. The purchaser, when he becomes "assured," accepts the insurance and affirmatively states and warrants certain things in the contract to be "warranted by the Assured" to be true. He thereby makes certain distinct and affirmative agreements which become a part of his contract. If he purchased upon the deferred payment plan he arranges with the dealer for someone to finance the payments; and this financial agent becomes a beneficiary. Finally a certificate, the evidence of insurance, is mailed to the purchaser in Maine. In that certificate the purchaser, who has become the insured, "agrees that its terms embody all agreements then existing between himself and the company." The local dealer, we think, when he solicits the sale of the car, solicits also the incidental insurance provided for by the Michigan contract. He selects the beneficiaries; he notifies the Sales Company in Michigan by mail of details essential to the completion of the insurance contract; his acts, together with those of the purchaser, bring the contract into actual existence; and these acts occur in Maine. There is no such meeting of minds as gives life to the contract until the purchaser accepts the car and the insurance from the retail dealer in Maine.

In our opinion, the question is not affected by the fact that the acceptance of the contract is obviously intended to be forced upon the purchaser, the assured, by the fact that

[fol. 46] the first year's insurance is already paid, regardless of whether the purchaser desires the insurance or not.

It is true that the dealer, who is himself the owner of the cars, does not hold himself out affirmatively and formally to be an insurance agent. He is not thinking much about insurance. He is bent on selling his cars. When he sells a car he is clearly making himself an instrument for effecting the insurance of it, although such insurance is incidental and deemed by him to be of little consequence. He effects this insurance in behalf of the Palmetto Company; and he has authority to so effect it. When he reports the sale to the Sales Company at Detorit, giving the name of the purchaser, the date of the sale, the motor number, the style of the car, and all elements required in order to issue an ordinary insurance policy,—and upon which certificate is actually issued—he seems to us to be giving the necessary information for effecting the insurance. In giving such information he is clearly acting for the Insurance Company. Within the meaning of the statute we think he "assumes to be an agent" and "procures risks and receives money for premiums," even though such premiums are submerged in the term "delivery charges" and other expressions.

It is contended by the learned counsel for the plaintiffs that the Palmetto Company, a South Carolinian corporation, had an undoubted right to make a contract of insurance with a citizen of Maine; that the case is ruled by Allgeyer v. Louisiana, 165 U. S. 578, 587, in which case the point decided was that a statute of a State, punishing the owner of property for obtaining insurance thereon in another State, was unconstitutional. The insurance in that case was not procured by an agent in the State of the assured.

In Hooper v. California, 155 U. S. 648, the Court decided that a statute of California, by which Hooper was guilty of procuring insurance for a resident of California from a foreign insurance company which had not given bond as required by the laws of California, was constitutional. The Court upheld the principle that the right of a foreign corporation to engage in business within a State other than that of its creation depends solely upon the will of such other State, and illustrated that principle by a long line of [fol. 47] decisions. The Court decided that the business of

insurance is not commerce; that a contract of insurance is not an instrumentality of commerce; the making of such a contract is a mere incident of commercial intercourse. The Court held that the State of California has the power to exclude foreign insurance companies from its territory, or, if it allows such companies to enter the State, to determine the conditions under which the entry is to be made, and to regulate and enforce all legislation in regard to things done within the territory of the State which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious; subject always to the paramount authority of the Constitution of the United States. In Allgeyer v. Louisiana, supra, the Supreme Court based its decision upon the fact that the contract was made beyond the territory of the State of Louisiana; that nothing whatever was done in that State in relation to the completion of the contract; but that all that was done in that State was the mailing of the letter of notification; and that this was done after the principal contract had been fully effected. It expressly recognized Hooper v. California, supra, and distinguished it. In speaking for the Supreme Court, Mr. Justice Peckham quoted the language of Mr. Justice White in that case:

"It is said that the right of a citizen to contract for insurance for himself is guaranteed by the Fourteenth Amendment, and that, therefore, he cannot be deprived by the State of the capacity to so contract through an agent. The Fourteenth Amendment, however, does not guarantee the citizen the right to make within his State, either directly or indirectly, a contract, the making whereof is constitutionally forbidden by the State. The proposition that, because a citizen might make such a contract for himself beyond the confines of his State, therefore he might authorize an agent to violate in his behalf the laws of his State, within her own limits, involves a clear non sequitur, and ignores the vital distinction between acts done within and acts done beyond a State's jurisdiction."

In Nutting v. Massachusetts, 183 U. S., 553, 556, in speaking for the Supreme Court, Mr. Justice Gray said:

"A State has the undoubted power to prohibit foreign insurance companies from making contracts of insurance,

marine or other, within its limits, excepting upon such conditions as the State may prescribe, not interfering with interstate commerce. A contract of marine insurance is not an instrumentality of commerce, but a mere incident of commercial intercourse. The State, having the power to impose conditions on the transaction of business by foreign insurance companies within its limits, has the equal right to prohibit the transaction of such business by agents of such companies, or by insurance brokers, who are to some extent [fol. 48] the representatives of both parties. Hooper v. California, 155 U. S., 648; Allgeyer v. Louisiana, 165 U. S., 578."

We are of the opinion that the instant case is governed by the principles of the cases we have cited, and especially the Hooper case. We think these cases are decisive of the constitutionality of the statute in question and of other statutes found in Chapter 53 of the Revised Statutes of Maine undertaking to regulate insurance within the State. Allgeyer v. Louisiana, supra, does not, we think, make a path for the plaintiff to escape from the Maine insurance regulations. For, even though the insurance company may not be prevented from making in Michigan an insurance contract with a Maine citizen, it does not follow that such company may be permitted to place an agent in Maine to aid it in effecting such insurance, even though such agent is called a "dealer," and even though his main duty is to promote the sale of automobiles. In making sales of $200,000 worth of Chrysler cars in the first six months of 1925, it is clear that the twenty-six "dealers" of the Sales Company in Maine promoted and effected a substantial volume of insurance business. Such insurance business the Maine Statutes had a right to regulate.

Questions similar to those raised in the instant case have been passed upon in certain unreported opinions by Courts organized as this Court is organized, under Section 266 of the Judicial Code. In Palmetto Fire Insurance Company v. James A. Beha, Superintendent of Insurance for the State of New York, the defendant was enjoined from revoking the license of the Palmetto Fire Insurance Company on the ground, as it appears, that the New York statutes do not prohibit the transactions involved in that case; and that such transactions being valid in Michigan, and not made

valid in New York, no legal cause for the cancellation of the license existed. In some of the conclusions of law, as we understand them, we are not in agreement. In Palmetto Insurance Company v. Harry L. Conn, Superintendent of Insurance for the State of Ohio, the Court was called upon to enjoin the revocation of the license of the Palmetto Fire Insurance Company to do business in Ohio. It was held that the statute of that State prohibiting an insurance company [fol. 49] legally authorized to transact business in Ohio from writing, placing or causing to be written or placed, insurance upon property situated in that state—except through a legally authorized agent therein who should countersign all policies and enter the payment of the premium upon his record,—was valid so far as insurance corporations who had taken out licenses were concerned; and that such a license might properly be revoked if the statute was violated. The precise question there passed upon is not involved in the case before us. Neither of the above cases present the facts found in our record. They are not, of course, of binding force as authorities.

In Chrysler Sales Company vs. W. Stanley Smith, Commissioner of Insurance for Wisconsin, the Court had before it a case quite similar to the instant case; and we have derived real assistance from the clear opinion of Judge Luse. The statute in question was similar to our statute; the attempt was to enjoin the Insurance Commissioner. Judge Luse discusses a contract and plan substantially like the contract and plan in this case. In speaking for the Court he says:

"One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail, and until title has passed from, not only complainant, but its distributors and dealers, and only takes effect upon a sale at retail and covers only the loss sustained by the retail purchaser and lien claimants whose claims grow out of the transaction of retail sale. When so sold, complainant claims, the insurance becomes automatically effective, by virtue of the Michigan contract. Plainly the theory of complainant is that this insurance is something that attaches to and follows an automobile upon its course in the market, as though a part or accessory, and that the dealer who sells the car has nothing to do with the

insurance item,—he merely sells the car with all its equipment including the insurance. But this idea is erroneous for, at least, two reasons: (1) the Insurance never had effective existence until the sale at retail, by its very terms, or, as it may differently be stated, it is only to be made operative by an act of the retail dealer, and (2) the legal concept of insurance is that in the absence of special circumstances it does not attach to property but to persons. As said by Story, J., in Carpenter v. Providence Co., 16 Peters, 495, 503, quoting Lord Hardwick:

" 'The society are to make satisfaction in case of any loss by fire. To whom, or for what loss are they to make satisfaction? Why, to the person injured, and for the loss he may have sustained, for it cannot be properly called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage.'

"A similar thought underlies the decision in Paul v. Virginia, 8 Wall. 168, wherein Justice Field says, referring to insurance contracts:

" 'These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of [fol. 50] trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one state to another and then put up for sale.'

"And this thought has withstood numerous assaults as is indicated in N. Y. Life Ins. Co. v. Deer Lodge County, 231 U. S., 495. And so we conclude that the insurance feature of the sales of Chrysler cars in Wisconsin may not be treated as an appendage or bit of equipment of small relative cost, which passes with the transfer of the car, but must be approached as a contract between persons, the insurer and the insured, and in so far as an insurance results it must be viewed as a thing apart and distinct from the cars sold."

We have quoted quite fully from the opinion in the Wisconsin case because much of its language is apt and fitting to the record in the case at bar.

Judge Luse has shown that a contract of insurance is a personal*y* contract between the insurer and the insured, and

that the minds of both insurer and insured must meet in order to effect such insurance. The Statute of Maine defining an insurance contract is illustrative of this point. Under Chapter 53, Section 1 of the Revised Statutes of Maine, a contract of insurance—life insurance being excepted—is "an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction or injury of something in which the other party has an interest." And it is further provided that such insurance business, involving the use of such contracts, shall be carried on only by duly incorporated insurance companies who have complied with the Maine regulations in regard to insurance.

We have already held that the Michigan contract is not an insurance contract in presenti, but is an agreement that insurance will be effected in future on the sale of a car. This element of personality becomes important in view of the fact that the Michigan contract is in favor of "Chrysler Sales Corporation and/or for account of whom it may concern." But the personal quality of the contract is not affected by the words "for account of whom it may concern." The leading case upon this class of policy is Hooper v. Robinson, 98 U. S., 528, 536. In speaking for the Supreme Court, Mr. Justice Swayne said:

[fol. 51] "A policy like the one here in question, in the name of a specified party 'on account of whom it may concern,' or with other equivalent terms, will be applied to the interest of the persons for whom it was intended by the person who ordered it, provided the latter had the requisite authority from the former, or they subsequently adopted it. 1 Phillips, Ins. Sect. 383."

Hagan v. Scottish Insurance Company, 186 U. S., 423, 430, is also a leading case. In the latter case also "Phillips on Insurance" is cited:

"Sec. 385: The Rule, that an insurance 'for whom it may concern' will avail in behalf of the party for whom it is intended, does not mean that any specific individual must be intended. * * * But he may intend it for whatever party shall prove to have an insurable interest in the specified subject, in which case it will be applicable to the inter-

est of any person subsequently ascertained to have such an insurable interest, who adopts the insurance.

"Sec. 388. One may become a party to the insurance effected in his behalf, in terms applicable to his interest, without any previous authority from him, by adopting it, either before or after a loss has taken place and is known to him, though the loss may have happened before the insurance was made."

Open policies of this character have been most frequently found in maritime cases. A ship sails from sea to sea, and in many cases is for years away from its home port. In the meantime its owners are changing, and, in cases of loss, it often becomes difficult to trace the ownership. Courts have said that the contract may be made applicable to the interest of any person ascertained to have an insurable interest who "adopts" the insurance, even though such "adoption" is after the loss.

In the cases which we have cited upon that point the insurance was on a specific ship in one case and on a specific cargo in the other; the thing to which the insurance attached was, therefore, known when the blank policy was made, and the question was who had the insurable interest at the time of loss. In the case at bar there is no specific thing to which the insurance can attach until the "dealer" sells a car to a purchaser, and the purchaser accepts the car, with the insurance, and thereby becomes a party to the contract of insurance. There is, therefore, in the instant case, no question of the purchaser's insurable interest and no necessity of any further "adoption" of the contract. The contract of insurance clearly "concerns" the purchaser of the car.

[fol. 52] On the whole, we are of the opinion that the plaintiffs have not presented a case for an injunction against the defendant.

In view of our having passed upon the contract itself, which constitutes the vitals of the controversy, it is not necessary to discuss the question of jurisdiction. Nor is there any occasion for considering other Maine statutes alleged to have been violated. The motion for a preliminary injunction is denied.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—January 4, 1926

Utterback-Gleason Company, plaintiff in above entitled action, in which plaintiff's application for temporary injunction was heard in accordance with the provisions of Section 266 Judicial Code and was determined adversely to plaintiff, considering itself aggrieved by the order and decree of the above named court against it, entered on the fourth day of January, 1926, denying the application for an interlocutory injunction in said cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, be sent to the Supreme Court under the rules of said Court in such case made and provided.

Dated this fourth day of January, 1926.

Andrews, Nelson & Gardiner, Attorneys for said Petitioner.

The foregoing appeal is allowed.

Dated January 4, 1926.

Charles F. Johnson, U. S. Circuit Judge. John A. Peters, U. S. District Judge. Clarence Hale, U. S. District Judge.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—January 4, 1926

Plaintiff in connection with petition for appeal herein presents and files therewith its assignment of errors as to which matters and things it says that the order entered

herein on the fourth day of January 1926, is erroneous, to wit:

First. That the court erred in refusing interlocutory injunction as prayed.

Second. That the court erred in holding that distributors of and dealers in Chrysler automobiles in Maine, including plaintiff and others similarly situated, selling in Maine automobiles the purchasers of which are protected by insurance contract effected in Michigan between the Chrysler Sales Corporation and Palmetto Fire Insurance Company, as set out in complaint, and doing acts incidental to such sales, are violating the penal provisions of Maine Statutes, and particularly Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by the Public Laws of 1917, Chapter 25.

Third. That the court erred in holding that by virtue of the contract of insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company made in Michigan and the sale of Chrysler cars in Maine by dealers in and distributors of Chrysler cars in Maine and acts incidental [fol. 55] thereto, as set out in complaint, said Palmetto Fire Insurance Company is transacting an insurance business in Maine, and in not holding that Section 57 of Chapter 9 of the Maine Revised Statutes, purporting to levy a tax on premiums paid on unauthorized insurance contracts covering property in Maine, is invalid and in violation of the Constitution of the United States.

Fourth. That the court erred in holding that dealers in and distributors of Chrysler cars in Maine are agents of and for the Palmetto Fire Insurance Company in respect to business of that company transacted in the State of Maine.

Fifth. That the court erred in refusing to hold that Section 121 of Chapter 53 of the Maine Revised Statutes, as amended by the Public Laws of 1917, Chapter 25, has no application to dealers in and distributors of Chrysler automobiles in Maine, including plaintiff and others similarly situated as described in complaint.

Sixth. That the court erred in refusing to hold that Section 122 of Chapter 53 of the Revised Statutes of Maine, as

amended by Chapter 25 of the Public Laws of 1917, has no application to dealers in and distributors of Chrysler automobiles in Maine, including plaintiff and others similarly situated as described in complaint.

Seventh. That the court erred in refusing to hold that Section 129 of Chapter 53 of the Revised Statutes of Maine has no application to dealers in and distributors of Chrysler automobiles in Maine, including plaintiff and others similarly situated as described in complaint.

Eighth. That the court erred in holding that by virtue of the acts and transactions of dealers in and distributors of Chrysler cars in Maine (including plaintiff and others similarly situated) described in complaint, and contract made in Michigan between Chrysler Sales Corporation and [fol. 56] Palmetto Fire Insurance Company, and the operation of said contract, said Palmetto Fire Insurance Company is unlawfully transacting an insurance business in Maine.

Ninth. That the court erred in refusing to hold that the dealers in and distributors of Chrysler cars in Maine, including plaintiff and others similarly situated, are not violating any law of Maine, and that there is no Maine law sanctioning or supporting the prosecutions or actions against such dealers and distributors threatened by defendant.

Tenth. That the court erred in holding that the threatened acts of defendant, Wilbur D. Spencer, are supported and sanctioned by law, and in refusing to hold that said threatened acts and proceedings are not supported by law but are contrary to law and beyond the power of defendant and threaten to cause irreparable injury and damage to plaintiff and others similarly situated.

Eleventh. That the court erred in holding that Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by Chapter 25 of the Public Laws of 1917, construed as prohibiting the acts of Chrysler dealers and distributors, as set out in the complaint, is a valid law and does not violate any provision of the Constitution of the United States.

Twelfth. That the court erred in refusing to hold that the Statutes of the State of Maine in so far as they may be construed as prohibiting or penalizing the acts of dealers in and distributors of Chrysler cars in Maine are invalid as in violation of the Constitution of the United States, in that such statutes so construed take the property of said dealers and distributors without due process of law and take the property of the plaintiff herein, and others similarly situated, without due process of law and deny to said dealers and distributors including plaintiff the equal protection of the law and prohibit the sale of plaintiff's property by [fol. 57] itself and other independent dealers in Maine by virtue of the fact that the Chrysler Sales Corporation has effected in Michigan a contract of insurance protecting and benefitting all retail purchasers of Chrysler cars, thus attempting to penalize the making of a contract of insurance outside the state of Maine and to lay a burden thereon and because said statutes so construed destroy and take away without due process the liberty of contract of said dealers and distributors, including plaintiff and others similarly situated, to the prejudice and destruction of plaintiff's business, and because said statutes so construed violate the 14th Amendment to the Constitution of the United States, and also Article IV, Section 1 and Article I, Section 10 of said Constitution of the United States.

Thirteenth. That the court erred in refusing to hold that the threatened acts of the defendant would deprive the plaintiff of its property without due process of law and deny plaintiff the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States.

Fourteenth. That the court erred in refusing to hold that in so far as Maine statutes are construed as prohibiting the acts of Chrysler distributors and dealers in Maine, including plaintiff, they impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

Wherefore plaintiff prays that the order and decree may be reversed and that plaintiff may have an adjudication and decree in its favor.

Dated this fourth day of January, 1926.

Andrews, Nelson & Gardiner, Attorneys for Plaintiff.

[fols. 58 & 59] Bond on appeal for $500.00 approved; omitted in printing.

[fol. 60] In United States District Court

[Title omitted]

Order Allowing Appeal—January 4, 1926

Utterback-Gleason Company, plaintiff above named having filed its petition for an appeal herein and therewith its assignment of errors, now on motion of Andrews, Nelson & Gardiner, attorneys and solicitors for plaintiff, in term time and at the same term of the order and decree below mentioned, it is ordered that the appeal of said plaintiff, Utterback-Gleason Company, from the interlocutory order and decree of this court heretofore filed and entered herein on the fourth day of January, 1926, be and it hereby is allowed, as prayed for, the amount of the appeal bond on said appeal being hereby fixed at the sum of Five Hundred Dollars with surety to be approved by the court or judge thereof or clerk thereof.

And it now appearing that the appellant has executed its appeal bond in the said sum of Five Hundred Dollars with Fidelity and Deposit Company of Maryland as surety thereon and has presented the same for approval, said bond and surety are now hereby approved.

Dated January 4, 1926.

Charles F. Johnson, U. S. Circuit Judge. John A. Peters, U. S. District Judge. Clarence Hale, U. S. District Judge.

[fol. 61] Citation in usual form showing service on Raymond Fellows and Sanford L. Fogg, omitted in printing.

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD

To the clerk of the above-named court:

Please make up and certify the record in this cause to be transmitted to the Supreme Court of the United States on the appeal of the Utterback-Gleason Company and include in said record the following:

(1) Petition for appeal on said appeal.

(2) The assignment of errors on said appeal.

(3) The bond on said appeal and approval at foot thereof.

(4) The order allowing said appeal.

(5) The citation on appeal and admission of service thereof and notice of said appeal.

(6) The precipe for the transcript on said appeal.

(7) The verified bill of complaint filed in this casue, including exhibit attached thereto.

(8) The application for hearing under Section 266, Judicial Code, and motion for temporary restraining order filed September 3, 1925.

(9) The order to appear for hearing September 15, 1925 with record of service of same upon the defendant, the Governor of the State of Maine and the Attorney General of the State of Maine.

(10) The order of the court of January 4, 1926 denying applications for temporary injunction, together with a copy [fol. 63] of the opinion rendered in the case of the Chrysler Sales Corporation vs. Wilbur D. Spencer, Insurance Commissioner of the State of Maine.

(11) Clerk's certificate authenticating the record.

Dated January 5, 1926.

Andrews, Nelson & Gardiner, Attorneys for Utterback-Gleason Company, Appellant.

Augusta, Maine, January 5, 1926.

Seen and agreed to. Notice of filing acknowledged.
Raymond Fellows, Attorney General. Sanford L. Fogg, Deputy Attorney General, Attorneys for Wilbur D. Spencer, Insurance Commissioner of the State of Maine, Defendant and Appellee.

[fol. 64] Citation and service omitted; printed side page 61, ante.

[fol. 65] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 66] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation by Appellant of Parts of the Record to be Printed—Filed February 3, 1926.

To the clerk of the above-entitled court:

Now comes the apellant, Utterback-Gleason Company, and in pursuance of Rule 11, Subdivision 9 of the Rules of the United States Supreme Court, states that the points on which it intends to rely are:

1. That the plaintiff in justice and in equity is entitled to an interlocutory injunction.

2. That the various statutes of the State of Maine which this plaintiff is purported to have violated are not applicable to this plaintiff and to those similarly situated.

3. If said statutes be construed to be applicable to the plaintiff and to those similarly situated, then those statutes are contrary to the Constitution of the United States and void.

4. The plaintiff further intends to rely as a statement of its points on all the assignments of error filed in the court and appearing in the Transcript of Record here.

That it will be necessary for the consideration of these points to incorporate in the transcript in this appeal, the following:

[fol. 67] The entire record as certified to this court by the Clerk of the District Court of the United States, for the District of Maine, Southern Division.

Nicholas Kelley, Solicitor for Plaintiff.

Dated Portland, Maine, February 2, 1926.

[fol. 68] [File endorsement omitted.]

Endorsed on cover: File No. 31,627. Maine D. C. U. S. Term No. 904. Utterback-Gleason Company, appellant, vs. Wilbur D. Spencer, insurance commissioner of the State of Maine. Filed January 21st, 1926. File No. 31,627.